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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 DONNA G. YORK,)
11) No. CV-05-0260-MWL
12 Plaintiff,)
13 v.) REPORT AND RECOMMENDATION TO
14) GRANT JOINT MOTION FOR
15 JO ANNE B. BARNHART,) REMAND
16 Commissioner of Social)
17 Security,)
18 Defendant.)

19 The parties have filed a stipulation for remand of the above
20 captioned case to the Commissioner for further administrative
21 proceedings. (Ct. Rec. 12). The parties have **not** consented to
22 proceed before a magistrate judge. See September 28, 2005 entry
23 by deputy clerk. After considering the stipulation,

24 **IT IS HEREBY RECOMMENDED** that the above-captioned case be
25 remanded for further administrative proceedings. Upon remand, the
26 ALJ shall: 1) consolidate Plaintiff's applications for disability
27 insurance benefits and Supplemental Security Income (SSI)
28 disability benefits filed on July 15, 1996 and her applications
for disability insurance benefits and SSI disability benefits
filed on October 15, 2001 and rule on the entire period at issue;

1 2) give further consideration to the issue of whether Plaintiff
2 performed substantial gainful activity; 3) give further
3 consideration to the severity of Plaintiff's mental impairment(s)
4 during the entire period and, in so doing, evaluate all of the
5 opinion evidence, including, but not limited to, the opinions of
6 John McRae, Ph.D. (Tr. 317-320), Steven Sutherland, Ph.D. (Tr.
7 572-573), and James Bailey, Ph.D. (Tr. 574-577), and provide a
8 rationale for any findings regarding severity and residual
9 functional capacity; 4) consider the opinions of Robert Schneider,
10 M.D. (Tr. 48-49, 262, 264-265, 664-665, 666-667, 693-694,
11 699-700); 5) consider the lay witness statements of Jimmie York
12 (Tr. 520-524) and Joann Latin (Tr. 411-412) and, as necessary,
13 further evaluate Plaintiff's credibility; 6) obtain supplemental
14 evidence from a vocational expert regarding Plaintiff's ability to
15 do her past work or other work in the national economy; and
16 7) conduct any further proceedings as necessary to determine the
17 materiality of any alcoholism. On remand, this case will be
18 assigned to a different ALJ, other than ALJ Paul Gaughen, pursuant
19 to the provisions of Hallex I-2-155(D)(11)(a).

20 This Court recommends the reversal of the Commissioner's
21 decision under sentence four of 42 U.S.C. § 405(g) with a remand
22 of the cause to the Commissioner for further proceedings. See
23 *Melkonyan v. Sullivan*, 501 U.S. 89 (1991).

24 **IT IS FURTHER RECOMMENDED:**

25 1. The parties Joint Motion to Remand (**Ct. Rec. 12**) be
26 **GRANTED;**

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2. Judgment be entered for the **PLAINTIFF**; and

3. An application for attorney fees may be filed by
separate motion.

OBJECTIONS

Any party may object to a magistrate judge's proposed findings, recommendations or report within ten (10) days following service with a copy thereof. Such party shall file with the District Court Executive all written objections, specifically identifying the portions to which objection is being made, and the basis therefor. Attention is directed to Fed. R. Civ. P. 6(e), which adds another three (3) days from the date of mailing if service is by mail.

A district judge will make a *de novo* determination of those portions to which objection is made and may accept, reject, or modify the magistrate judge's determination. The district judge need not conduct a new hearing or hear arguments and may consider the magistrate judge's record and make an independent determination thereon. The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. See 28 U.S.C. § 636(b)(1)(B) and (C), Fed. R. Civ. P. 73, and LMR 4, Local Rules for the Eastern District of Washington. A magistrate judge's recommendation cannot be appealed to a court of appeals; only the district judge's order or judgment can be appealed.

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1 The District Court Executive is directed to enter this Report
2 and Recommendation and to forward copies to counsel and to the
3 referring judge.

4 DATED this 14th day of March, 2006.

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6 S/ Michael W. Leavitt
MICHAEL W. LEAVITT
7 UNITED STATES MAGISTRATE JUDGE
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